# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 149 of 2006
In
COMPANY APPLICATION No. 357 of 2006
With
COMPANY PETITION No. 150 of 2006
In
COMPANY APPLICATION No. 358 of 2006
With
CIVIL APPLICATION No. 245 of 2007
In
COMPANY PETITION No. 149 of 2006

For Approval and Signature:

**HONOURABLE MR.JUSTICE K.A.PUJ** Sd/-

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| **1.** | Whether Reporters of Local Papers may be allowed to see the judgment ? | **YES** |
| **2.** | To be referred to the Reporter or not ? | **NO** |
| **3.** | Whether their Lordships wish to see the fair copy of the judgment ? | **NO** |
| **4.** | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? | **NO** |
| **5.** | Whether it is to be circulated to the civil judge ? | **NO** |

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JAY BHARAT CARGO MOVERS PVT. LTD. - Petitioners
Versus
. - Respondent

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**Appearance** :
MR NK PAHWA FOR MRS SANGEETA N PAHWA for Petitioner.
MR HARIN P RAVAL, ASSISTANT SOLICITOR GENERAL for Central Government.
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**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

Date : 17/12/2007
COMMON ORAL JUDGMENT

1. These two petitions are in relation to the scheme of Amalgamation for the purpose of amalgamating Jay Bharat Leasing & Finance Ltd. (Transferor Company) with Jay Bharat Cargo Movers Pvt. Ltd. (Transferee Company).

2. Jay Bharat Cargo Movers Pvt. Ltd. (Transferee Company) has filed Company Petition No. 149 of 2006 seeking sanction to the Scheme. The Transferee Company filed Company Application No. 357 of 2006 seeking dispensation of the meeting of shareholders. This Court vide order dated 11.07.2006 made in Company Application No. 357 of 2006 (Page 38) has dispensed with the meeting of the shareholders.

3. Jay Bharat Leasing & Finance Ltd. (Transferor Company)

filed Company Petition No. 150 of 2006 seeking sanction of the Scheme. The Transferor Company filed Company Application No. 358 of 2006 seeking dispensation of the meeting of shareholders. The Company does not have any Creditor. This Court vide order dated 11.07.2006 made in Company Application No. 358 of 2006 (Page 36) has dispensed with the meeting of the shareholders.

4. Both the Company Petitions came to be admitted by this Court on 25.08.2006 and directed publication of notice of hearing of the petition in English Daily '**Indian Express**' and Gujarati Daily '**Gujarat Mitra**' both Surat editions. The Court also issued notice to the Regional Director, Western Region, Department of Company Affairs, Bombay.

5. The petitioners have published the notice of hearing of the petitions on 28.11.2006 in '**Indian Express**' English Daily and '**Gujarat Mitra**' Gujarati Daily both Surat Editions. An affidavit of publication of advertisement is filed dated 11.06.2007 (Page 76 in Company Petition No.149 of 2006).

6. Pursuant to the notice to the Official Liquidator in respect of the Transferor Company, a report dated 05.06.2007 is filed by the Official Liquidator. The report of the Official Liquidator confirms that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or the public interest.

7. In response to the notice to the Regional Director, Western Region, Department of Company Affairs, Shri Harin P. Raval, learned Assistant Solicitor General of India has appeared and has filed affidavit of Assistant ROC dated 02.02.2007 along with a copy of letter dated 23.01.2007 addressed by the Regional Director to the Registrar of Companies.

8. In response to the affidavit dated 02.02.2007 submitted on behalf of the Regional Director, Jay Bharat Cargo Movers Pvt. Ltd. (Transferee Company) filed an affidavit dated 11.06.2007 (page 45 of Company Petition No.149/2006) and stated that there is a typographical error in para 10 of the Scheme with respect to mentioning the figures as to the Exchange Ratio. It is

submitted that the correct exchange ratio as per the Valuation report is allotment of 1 equity share of Rs.1,000/- each credited as fully paid up by Jay Bharat Cargo Movers Pvt. Ltd. (Transferee Company) for every 1000 equity shares of Rs.10/- each fully paid up held by the shareholders of Jay Bharat Leasing & Finance Company (Transferor Company). The petitioner has also produced copy of the Valuation Report prepared by Ghanshyam K. Patel, Chartered Accountant (Page 48).

9. This Court vide order dated 12.07.2007 has issued notice to Central Government and also directed publication of advertisement in '**Indian Express**' and '**Gujarat Mitra**' both Surat editions and the petitions were ordered to be fixed for final hearing on 16.08.2007.

10. Apropos to the order dated 12.07.2007, the petitioners have served notice upon the Central Government Regional Director, Western Region. The petitioners have also published the advertisement in '**Indian Express**' and '**Gujarat Mitra**' **–** both Surat editions on 21.07.2007. An affidavit of publication of advertisements is filed by Shri Manish Jani dated 28.07.2007.

11. The Official Liquidator has filed another report dated 06.09.2007. In this report, it is stated that the Official Liquidator had sought certain clarifications from the petitioner by letter dated 18.05.2007 followed by a reminder dated 04.06.2007. The Official Liquidator also states that a reply dated 23.05.2007 is received by him from the petitioner on 06.06.2007. The Official Liquidator states that according to him, the petitioner has not properly explained para 1,3,4,5,6 and 8 of the clarifications. The Official Liquidator in his letter dated 18.05.2007 in paragraph 1 raised an objection that the Company is a non-banking finance company. As per the Income-Tax return of the Company for the assessment year 2006-07 for the accounting period 2005-06, the nature of business of the Company is leasing and finance. Hence, the explanation was sought for from the Company as to whether the Company has obtained certificate of Registration from the Reserve Bank of India for carrying on business as non-banking finance Company and if yes, the Company was directed to furnish copy of the Certificate. In this connection, it was stated by the Company that the Company has made the

application for registration as Non-banking finance Company and the same was rejected by the RBI. The Company was restrained from carrying on the business as Non-finance Company and the Company was also advised to close down the Company and in compliance with the same, the Company has decided to be merged with a Group Company which is not Non-Banking Finance Company.

12. In paragraph 3, the Official Liquidator has raised objection that it is seen from the Company's Balance-sheet as on 31.03.2006 that the share application money of Rs.70,53,000/- has been clubbed with the paid up capital of the Company in Schedule I and accordingly, the paid up capital of the Company is shown as Rs.2,00,63,000/- in the Balance-sheet as on 31.03.2006. The Company was, therefore, asked to explain as to how and in what accounting standard or any other recognized accounting principle / practice the share application money has been grouped with paid up share capital. In reply to this, the Company has stated in its reply dated 23.05.2006 that the Company has accepted the share application money from Members, Directors and their

relatives. However, the same was not appropriated. The amount lying at the credit of share application money is required to be refunded to the applicants from whom the same had been received.

13. In paragraph 4 of the letter, an inquiry was made about the details of share application money, which was later on found along with the report of the Chartered Accountant. In paragraph 5 of the said letter, an inquiry was made with regard to the depreciation in notes on accounts Schedule 11 to the Balance-Sheet as on 31.03.2003 and the same was also explained by the Company in its letter dated 23.05.2006. Paragraph 6 of the said letter refers to the depreciation and reply thereto was given by the Company. Paragraph 8 is in respect of share application money and it is also duly explained by the Company vide its letter. The Chartered Accountant has also taken care of this issue in his report. Not only this, Mr. N. K. Pahwa, learned advocate appearing for the petitioner Company has submitted that the share application money will be paid back to the members Directors and/or relatives from whom the same was received, as per the direction of this Court.

14. The Official Liquidator has placed the explanation tendered by the Company before this Court and this Court vide its order dated 19.11.2007 directed the Official Liquidator to refer the matter to the Chartered Accountant for his examination and to submit further report whether the issues raised by the Official Liquidator vide his letter dated 18.05.2007 are satisfactorily explained by the Company or not. Pursuant to the said order, the matter was referred to the Chartered Accountant and the Chartered Accountant vide his letter dated 30.11.2007 has submitted a report. It is found from the report of the Chartered Accountant that the reply given by the Company was taken care of and he has submitted his report. However, the Official Liquidator was of the view that the Chartered Accountant has not given his own comments thereon and none of the issues are satisfactorily explained by the Company. The Official Liquidator, therefore, wrote a letter dated 05.12.2007 to the Chartered Accountant. A copy of this letter is also produced on record of this petition. However, it appears to the Court that letter dated 15.12.2007 is nothing but repetition of the earlier

queries raised by the Official Liquidator and the explanation was duly tendered by the Company and the same was also dealt with by the Chartered Accountant in his report. Hence, it cannot be said that the Company has not satisfactorily tendered its explanation with regard to the issues raised by the Official Liquidator.

15. Even otherwise, it has been contended before the Court that the observations made by the Official Liquidator as such are beyond the scope of examination of the affairs under Section 394 of the Companies Act, 1956. Without prejudice, it has been contended before the Court that the same Official Liquidator after obtaining report of the Chartered Accountant had opined that the affairs of the Company have not been conducted in the manner prejudicial to the interest of its members or public interest. It has also been contended that the observations made by the Official Liquidator in the report dated 06.09.2007 are as such not germane to the scope and intent of inquiry under Section 394 of the Companies Act, 1956. It has also been stated before the Court that the petitioner will deal with the said issues in appropriate proceedings as and when the same are

raised in accordance with law.

16. In view of the aforesaid discussion and in view of the report of the Chartered Accountant who has duly considered the explanation submitted by the Company and in view of the report submitted by the Regional Director through Registrar of Companies wherein no objections have been raised against the proposed Scheme of Amalgamation, the Court is of the view that the Scheme as proposed by the Companies with regard to amalgamation deserves to be sanctioned. Accordingly, prayers contained in paragraph 15 (A) of both the petitions are hereby granted. Petitions are accordingly disposed off.

17. So far as Civil Application No. 245 of 2007 is concerned, a prayer is made for amendment and/or rectification of Clause 10 of the Scheme of Amalgamation. It is submitted that while submitting the Scheme, the petitioners found that there is a typographical error in mentioning the Exchange Ratio. Whereas the correct Exchange Ratio as per the Valuation Report is one equity share of Rs.1000/- each credited as fully paid up by Jay

Bharat Cargo Movers Pvt. Ltd., the Transferee Company for every 1,000 equity shares of Rs.10/- each fully paid up held by the shareholders of Jay Bharat Leasing & Finance Limited (Transferor Company). As against this, by typographical error, Clause 10 of the Scheme reads as under :-

> *"10. ..... Issue and allot to the Equity Shareholders of Jay Bharat Leasing & Finance Ltd. 1 (one) Equity Share of Rs.1000/- each credited as fully paid up in the capital of Jay Bharat Cargo Movers Pvt. Ltd. For every 1 (one) equity share of the face value of Rs. 10/- each held by the Shareholders in Jay Bharat Leasing & Finance Ltd."*

18. The above error is typographical error and hence, request was made to the Court to permit rectification of para 10 of the Scheme. The applicant has also filed affidavit dated 11.06.2007.

19. In this application earlier, an order of admission and fresh advertisement was passed on 12.07.2007 and the same was duly complied with. Even copy of this application was also forwarded to the Regional Director who has not raised any objection. Considering the above facts and since it is only a typographical error, the prayer made in the present application is accordingly granted. The applicant is permitted to make an

amendment / rectification in paragraph 10 of the Scheme. This application is accordingly granted.

20. So far as the costs to be paid to the Assistant Solicitor General is concerned, the same is quantified at Rs.3,500/- per petition. Liberty is given to the Transferee Company to pay the amount of cost directly by drawing a Cheque in favour of Mr. Harin Rawal, learned Assistant Solicitor General of India.

21. The share application money which is lying with the Company and which the Company has already undertaken before this Court to return to the parties from whom the said amount is received, shall be refunded to them within four weeks from today and compliance report to this effect shall be filed in the form of affidavit.

22. Accordingly, both the Company Petitions as well as Civil Application No. 245 of 2007 stand disposed of.

Sd/-
[**K. A. PUJ, J.**]

Savariya